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Attorneys for Plaintiff  
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**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ MAR 04 2011 ★  
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNIPAC SHIPPING, INC.,

**CV 11 - 1035**  
Index No.:

Plaintiff,

- against -

NIKI INTERNATIONAL, INC., AE EAGLE  
AMERICA, INC., and SALSON CONTAINER  
FREIGHT STATION,

**COMPLAINT WITH  
DECLARATORY  
RELIEF SOUGHT**

AMON, J.

CARTER, M.J.

Defendants.

-----X  
Plaintiff, UNIPAC SHIPPING, INC. ("Unipac"), by and through its attorneys, Bennett,  
Giuliano, McDonnell & Perrone, LLP, as and for its Complaint against defendants, NIKI  
INTERNATIONAL, INC. (Niki), AE EAGLE AMERICA, INC. ("AE"), and SALSON  
CONTAINER FREIGHT STATION ("Salson"), allege upon information and belief as follows:

INTRODUCTION

1. This is an action seeking a declaratory judgment that Unipac has no legal or  
monetary obligations to the defendants for the cost, duties, charges, etc. associated with  
defendant Niki's goods or for the demurrage<sup>1</sup> associated with those goods.

<sup>1</sup> Demurrage is defined as a storage charge "levied against cargo remaining on a pier or wharf after the expiration of free time." If delivery is not taken within the free time, the storage charge becomes the consignee's obligation. Port of Boston Marine Terminal Ass'n v. Boston Shipping Ass'n, 420 F.2d 419, 420, 1970 A.M.C. 52, 53 (C.A.Mass. 1970).

JURISDICTION AND VENUE

2. This action is filed under and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

3. The following issues arise from an ocean bill of lading, and thereby, are also covered through the admiralty and maritime jurisdiction of the United States and of this District Court, pursuant to 28 U.S.C. § 1333, and are maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

4. An actual controversy of a justiciable nature exists between the plaintiff and defendants under an ocean bill of lading and the controversy can be determined by a judgment of this Court without further suit.

5. Venue is proper in this district, as it is where the plaintiff resides, the defendants are subject to the personal jurisdiction of this Court, and it is where the subject ocean bill of lading was issued to defendant Niki.

PARTIES

6. At all material times, Unipac was and still is a corporation organized under the laws of the State of California with a place of business at 182-16 147<sup>th</sup> Ave., 2<sup>nd</sup> Floor, Jamaica, New York 11413.

7. At all material times, Niki was and still is a corporation organized under the laws of the State of New Jersey with a place of business at 9 Cotters Lane, East Brunswick, New Jersey 00816.

8. At all material times, AE was and still is a corporation organized under the laws of the State of New York with a place of business at 147-31 176<sup>th</sup> Street, Jamaica, New York 11434.

9. At all material times, Salson was and still is a corporation organized under the laws of the State of New Jersey with a place of business at 888 Doremus Avenue, Newark, New Jersey 07114.

FACTS AND CLAIMS

10. In or around November 2010, freight forwarder Unipac entered into an agreement with consignee Niki to forward Niki's goods (1,457 cartons of cotton sheets) from Shanghai, China to New York, New York and Unipac issued a bill of lading to Niki for the goods. (Exh. 1, Bill of Lading No.: SHA10101780.)

11. Shortly thereafter, Unipac entered into an agreement with ocean carrier AE to transport Niki's goods from Shanghai to New York, with an estimated time of arrival of November 24, 2010. (Exh. 2, AE Arrival Notice/Freight Bill.)

12. Unipac caused an Arrival Notice/Freight Invoice to be sent to Niki, informing Niki that: (1) its goods would be available for pickup on November 26, 2010; (2) the goods would be located at Salson Container Freight Station in Newark, New Jersey; and (3) the last free day before demurrage would be charged by Salson would be December 3, 2010. (Exh. 3, Unipac Arrival Notice/Freight Invoice.)

13. Niki did not contact Salson to arrange to pick up its goods until January 27, 2010, a full 62 days after the goods had arrived at Salson. At which time, Niki was informed that its goods were sold for salvage by Salson on January 20, 2011.

14. Niki took no action to pay Unipac for Unipac's services until January 19, 2011, when Niki remitted payment to Unipac.

15. On February 4, 2011, Unipac received a letter from AE stating that Niki's goods were sold for salvage by Salson because the goods were not picked up from the freight station. (Exh. 4, 4 Feb. 2011 letter from AE.)

16. The February 4, 2011 letter from AE was the first notice that Unipac received regarding the salvage sale of Niki's goods.

#### **FIRST CAUSE OF ACTION**

17. The plaintiff re-adopts and re-alleges all of the paragraphs above as fully set forth herein, and in addition, alleges the following:

18. By reason of the above, the plaintiff is entitled to a declaratory judgment stating that it fulfilled all duties it owed to defendant Niki and owes no further legal duties to Niki for any loss of value between the cargo value and the salvage sale.

#### **SECOND CAUSE OF ACTION**

19. The plaintiff re-adopts and re-alleges all of the paragraphs above as fully set forth herein, and in addition, alleges the following:

20. By reason of the above, the plaintiff is entitled to a declaratory judgment stating that it owes no legal duties to AE or Salson for the demurrage accrued during the approximately 62 days that Niki's goods remained at the freight station after arrival.

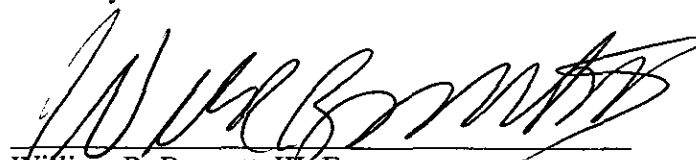
**WHEREFORE**, plaintiff demands: (1) a declaratory judgment finding that any loss of value between the cargo value and the salvage sale with regard to Niki's cargo is not and cannot be legally attributable to plaintiff Unipac; (2) a declaratory judgment finding that the demurrage accrued during the approximately 62 days that Niki's goods remained at the Salson freight

station after arrival is not and cannot be legally attributable to plaintiff Unipac; and (3) any further relief as the equities of the case so demand.

Dated: New York, New York  
March 2, 2011

Respectfully Submitted,

Bennett, Giuliano, McDonnell & Perrone, LLP  
Attorneys for Plaintiff



William R. Bennett, III, Esq.  
494 Eighth Avenue, 7<sup>th</sup> Floor  
New York, New York 10001  
Telephone: (646) 328-0120

To: Niki International, Inc.  
9 Cotters Lane  
East Brunswick, New Jersey 00816

AE America Eagle, Inc.  
147-31 176<sup>th</sup> Street  
Jamaica, New York 11434

Salson Container Freight Station  
888 Doremus Avenue  
Newark, New Jersey 07114



**UNIPAC** Shipping Inc.**BILL OF LADING**


01-14061

FMC 3734

SHIPPER / EXPORTER SHANDONG TAIFENG TEXTILE CO.,LTD. NO.59HUIYUAN STREET ECONOMY DEVELOPMENT ZONE LAIWU SHANDONG CHINA		BL NO. SHA10101780	
CONSIGNEE NIKI INTERNATIONAL INC 9 COTTERS LANE EAST BRUNSWICK,NJ 00816 USA		EXPORT REFERENCES JF10101153NY <b>1 OF 6</b>	
NOTIFY PARTY SAME AS CONSIGNEE		FORWARDING AGENT-REFERENCES UNIPAC SHIPPING INC, NEW YORK 182-16 147TH AVE. 2ND FLOOR JAMAICA, NY 11413 TEL:(718) 995-8168 FAX:(718) 995-8169	
DEPOT		DOMESTIC ROUTING / EXPORT INSTRUCTIONS <b>ETA: 11/24/2010</b>	
EXPORTING CARRIER NYK CONSTELLATION V.19E43	PORT OF LOADING SHANGHAI, CHINA	ONWARD INLAND ROUTING	
PORT OF DISCHARGE NEW YORK,NY	FOR TRANSHIPMENT TO NEW YORK,NY	CARGO INSURANCE THRU CARRIER COVERED <input type="checkbox"/> NOT COVERED <input type="checkbox"/>	EXCESS VALUE DECLARATION*

## PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
NIKI INTERNATIONAL INC ITEM: PO NO.: SIZE: COLOR: QTY: NET WEIGHT: CUBE: CARTON OF_ MADE IN CHINA	1457 CARTONS	100% COTTON SHEET SET AS PER BUYER'S PO:10148&10185  <b>OKL REND ON 1/29/2011</b> <b>FROM CNGB!</b>  FREIGHT COLLECT TCLU5779000 40HQ AVM3700 1457 CARTONS 5931.75KGS 20.09CBM CFS-CFS SAY TOTAL : ONE THOUSAND FOUR HUNDRED FIFTY SEVEN (1457) CARTONS ONLY.  <b>ORIGINAL</b>	5931.750KGS	20.09CBM
			ON BOARD DATE NOV. 1, 2010	

ITEM	PREPAID	COLLECT
OCEAN FREIGHT AS ARRANGED		
IN WITNESS WHEREOF, THE UNDERSIGNED, HAS SIGNED THREE (3) BILLS OF LADING. ALL OF THE SAME TENOR AND DATE. ONE OF WHICH BEING ACCOMPLISHED. THE OTHERS TO STAND VOID.  <b>UNIPAC SHIPPING INC. AS AGENT FOR THE CARRIER</b>  BY  SHANGHAI, CHINA DATE NOV. 1, 2010 <b>AS CARRIER</b>		
* IF SHIPPER CLAIMS A GREATER VALUE FOR THE CARGO THAN USD \$500.00 PER CARTON, SHIPPER MAY, AT ADDITIONAL COST, DECLARE EXCESS VALUE. ATTENTION OF SHIPPER, THE TERMS AND CONDITIONS OF THIS NON-NEGOTIABLE BILL OF LADING UNDER WHICH THIS SHIPMENT IS ACCEPTED ARE PRINTED ON THE BACK HEREOF AND ARE ALSO AVAILABLE AT WWW.UNIPACSHIPPING.COM.		
B/L NO. SHA10101780		





**AE Eagle America Inc**

147-31 176th Street, Jamaica, NY 11434,  
Tel: 718-995-6789 Fax: 718-995-6788

Print Date: 11-17-2010 16:12  
Ollimport(Oscar.li@ae-eagle.com)

**ARRIVAL NOTICE / FREIGHT BILL**

2076

<b>To :</b> Unipac Shipping, Inc. 182-16 147th Avenue, 2nd Floor Jamaica, NY 11413, USA TEL: 718-551-3812/3831 FAX: 718-995-8169	<b>INVOICE NO.</b> <b>USA-AR014770</b> <b>HOUSE B/L NO.</b> <b>JF10101153NYC</b> <b>HOUSE DOC NO.</b> <b>USA-OI002463-006949</b>	<b>INVOICE DATE</b> <b>11-26-2010</b> <b>MASTER B/L NO.</b> <b>OOLU2509143480</b> <b>AMS REF NO.</b> <b>FCCJ JF10101153NY</b>
<b>BROKER</b>	<b>CARRIER</b> <b>OOCL (USA) Inc.</b> <b>VESSEL/VOYAGE</b> <b>NYK CONSTELLATION/19E43</b>	<b>REFERENCE NO.</b>
<b>SHIPPER</b> Shanghai T.H.I. Transport Co., Ltd. Shanghai Branch O.B.	<b>PLACE OF RECEIPT</b>	<b>SUB B/L NO.</b>
<b>CONSIGNEE</b> Unipac Shipping, Inc.	<b>PORT OF LOADING</b> <b>SHANGHAI, CHINA</b>	<b>ON BOARD DATE</b> Nov 1, 2010
<b>NOTIFY</b> Unipac Shipping, Inc. TEL: 718-551-3812/3 FAX: 718-995-8169	<b>PORT OF DISCHARGE</b> New York <b>PLACE OF DELIVERY</b> <b>NEW YORK, NY</b>	<b>ETA</b> Nov 24, 2010 <b>DESTINATION ETA</b> Nov 26, 2010
<b>FREIGHT LOCATION</b> Salson CFS 888 Doremus Ave (firm code E614) Newark, NJ 07114, USA TEL: 973-776-0001 / 986-0200 FAX: 973-368-1959	<b>LAST FREE DATE</b> <b>I.T. No</b> <b>I.T. CITY</b>	<b>G.O. DATE</b> <b>I.T. DATE</b> <b>I.T. DESTINATION</b>
<b>DISCHARGE PORT / FREIGHT LOCATION</b> 3739860200	<b>BOND CARRIER</b> <b>SERVICE TYPE</b> <b>CFS/CFS</b>	
<b>REMARKS</b>	<b>TERMS</b> <input checked="" type="checkbox"/> Telex Release <input type="checkbox"/> Need Release Order <input checked="" type="checkbox"/> Freight Collect	

PKGS	MARKING	DESCRIPTION OF PACKAGES	WEIGHT	CONTAINER LIST
1457 Cartons	NIKI INTERNATI ONAL INC ITEM: PO NO.: SIZE: COLOR: QTY: NET	100% COTTON SHEET SET AS PER BUYER'S PO: 10148 & 10185	5,931.75 KGS 13,077.10 LBS 20.09 CBM 709.50 CBF	TCLU5779000 / 40' HQ
TERMS & CONDITIONS			CHARGE ITEM	AMOUNT
<b>**CARGO WILL BE RELEASED ONLY UPON SURRENDER OF ENDORSED ORIGINAL BILL OF LADING AND CHARGES DUE PAID. PLEASE ALLOW 24-48 HRS FOR RELEASE. **ALL CARGO WHEN DISCHARGE ON WHARF IS AT OWNER'S RISK AND IF NOT REMOVED WITHIN THE FREE TIMES BECOMES SUBJECT TO DEMURRAGE CHARGES.</b>			Warehouse In & Out	739.09
			*** TOTAL DUE (USD) ***	739.09





## UNIPAC SHIPPING INC - NY

182-16 147TH AVE, 2ND. FLOOR JAMAICA, NY 11413  
 TEL: 718-995-8168 FAX: 718-995-8169 EMAIL: ellen@unipacshippinginc.com

## ARRIVAL NOTICE / FREIGHT INVOICE

4076

SHIPPER SHANDONG TAIFENG TEXTILE CO.,LTD	REFERENCE NO. OINY-14061	DATE
	MASTER B/L NO. OOLU2509143480	PREPARED BY Ellen Ma
CONSIGNEE NIKI INTERNATIONAL, INC. 9 COTTERS LANE EAST BRUNSWICK, NJ 08816 USA ATTN:MARIA TEL:732-238-6364 FAX:1-732-238-7029	SUB B/L NO.	HOUSE B/L NO. SHA10101780
	AMS B/L No. FCCJJF10101153NY	CUSTOMER REF. NO. 10148&10185
NOTIFY PARTY NIKI INTERNATIONAL, INC. 9 COTTERS LANE EAST BRUNSWICK, NJ 08816 USA ATTN:MARIA TEL:732-238-6364 FAX:1-732-238-7029	VESSEL & VOY NO. NYK CONSTELLATION 19E43	
	PORT OF LOADING SHANG HAI,SHANGHAI,CHINA	ETD 10/30/10
	PORT OF DISCHARGE NEW YORK, NY	ETA 11/24/10
	PLACE OF DELIVERY NEW YORK, NY	
	FINAL DESTINATION NEW YORK, NY	ETA 11/24/10
FREIGHT LOCATION SALSON CONTAINER FREIGHT STATION, 888 DOREMUS AVENUE NEWARK, NJ 07114 UNITED STATES USA TEL:973-776-0001 FAX:1-973-368-1982	FIRM CODE E614	AVAILABLE DATE 11/26/10
	LAST FREE DATE 12-03-2010	G.O. DATE
CONTAINER RETURN		

I.T. NO : DATE : PLACE :

PARTICULARS FURNISHED BY SHIPPER			
CONTAINER NO./SEAL NO. MARKS & NOS.	NO. OF CONT. NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT MEASUREMENT
* Container No. TCLU5779000 / CFS / AVM3700 / 1457PKGS	1457 CARTONS	100% COTTON SHEET	5931.75 KGS 13077.14 LBS 20.090 CBM 709 CFT

Salvaged  
Auction

"ORIGINAL B/L REQUIRED"  
CFS/CFS

## REMARK:

on 1/20/2011

1. Please make a check payable to "UNIPAC SHIPPING INC"
2. For over US\$5,000.00, payment must be cashier check/broker's check or wire transfer. For wire info. please call us.
3. Freight will be released upon receipt of properly endorsed Original Bill of lading and payment. Please allow minimum 24 hours to complete the processing.
4. Consignee has to clear custom and confirm with terminal/container yard/ container stations for freight release prior to pick up. Please pick up cargo ASAP to avoid unnecessary charges. Unipac Shipping Inc. is not reliable for demurrage, per diem or any other subsequential charges not caused by Unipac.
5. If any charges incurred at the whse/terminal such as demurrage, exams, drayage to U.S.D.A. for inspection will be consignee's responsibility.
6. All inland shipments: it is customs brokers responsibility to make sure customs is fully cleared and trucker/broker must call for PU# after cntr has arrived. E-mail/fax Delivery Order to us 3 working days

Invoice No : NY-15755-A Due date:11/24/2010		
DESCRIPTION OF CHARGES	PREPAID	COLLECT
HANDLING CHARGE		65.00
IN & OUT		739.09
TOTAL AMOUNT	USD	804.09





~~CONFIDENTIAL~~

6 of 6

Unipac Shipping, Inc.  
182-16 147th Avenue, 2nd Floor  
Jamaica, NY 11413  
[import@unipacshippinginc.com](mailto:import@unipacshippinginc.com)  
tel#718-551-3812  
fax#718-995-8169

Date: 02/04/2011

To Whom It May Concern:

Reference shipment#USA-OI002463/ OOLU2509143480/ JF10101153NYC

AE Eagle America, Inc. hereby notify Unipac Shipping, Inc. that due to your failure to pick up the cargo, Salson sold the cargo for salvage. AE Eagle America, Inc. has requested the proceeds of the salvage sale and the funds will be turned over to Unipac Shipping upon receipt. AE Eagle America, Inc. is not responsible for any loss of value between the cargo value and salvage sale due to Unipac Shipping's failure to pick up the cargo.

Best regards,

A handwritten signature in black ink, appearing to be "K. [unclear]", with a long horizontal flourish extending to the right.

**147-31, 176th Street, Jamaica, NY 11434**

Tel: 718-995-6789 / Fax: 718-995-6786 / E-mail: [Info@AE-eagle.com](mailto:Info@AE-eagle.com)

All transaction are subject to our company trading terms and conditions, which are available upon request.